HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition No.16961 of 2001

&

WP MP No.32317 of 2013

ORDER:

Heard Sri Kasa Jaganmohan Reddy, learned counsel appearing for the petitioner, learned Government Pleader for Higher Education- Respondents 1 & 2, learned standing counsel for the 3rd respondent and Sri Sadu Rajeshwar Reddy, learned counsel appearing for R.5.

2. Pursuant to the notification issued by the 4th respondent in news papers for the post of Lecturers in Political Science, Arbic and Hindi, the petitioner applied for the post of Lecturer in Hindi. About 13 candidates were called for the interview, out of whom, nine appeared, and three were selected, including the petitioner, as Lecturers in the 4th respondent-Junior College, Warangal. The selection was conducted by a duly constituted selection committee. The 4th respondent issued orders of appointment dated 21.10.1998, appointing the petitioner as Junior Lecturer in Hindi and she reported to duty on 23.10.1998. By proceedings dated 26.10.1998, the 4th respondent informed the 3rd respondent-Director of Intermediate Education that the petitioner was selected as Junior Lecturer in Hindi by the duly constituted selection committee, including subject expert. Prior permission for selection was also given to the 4th respondent-Institution on 01.08.1998 by the 3rd respondent to fill-up the vacancies and therefore the approval of the appointment of the petitioner and 2 others was sought for. But as the approval was held-up, the petitioner was not paid any salary. It is submitted by the petitioner that the 4th respondent-Institution is a Muslim Religious Minority Educational

Institution, entitled to exercise the fundamental right to establish and administer the institution, including right to appoint qualified teaching staff to the choice of the Management and a right to constitute a Selection Committee to select the candidates, who possess the qualifications prescribed by the Government.

ii) It is further submitted that Clause 8(1) of G.O.Ms.No.526 dated 21.12.1988 obligates the educational agency i.e., Management of a Minority Education Institution to constitute staff selection committee on the lines prescribed by the Government for other private educational institutions with a Government representative if financial aid from the Government is required by the institution. The petitioner submits that Rule 8(1) of G.O.Ms.No.526 to that extent is void, illegal and violative of Article 30(1) of the Constitution of India and therefore, liable to be struck down. It is under these circumstances, he filed the present writ petition to declare clause 8(1) of G.O.Ms.No.526 dated 21.12.1988 and also clause (2) of G.O.Ms.No.127 dated 07.06.1993 requiring the inclusion of a Government nominee in the selection committee, as illegal and violative of Articles 14, 16, 21 and 30(1) of the Constitution of India and to issue further direction to respondents 1 to 3 to approve the appointment of the petitioner as per selection made on 17.10.1998 and to release salary from the date of joining into service.

3. During pendency of the writ petition, the 5th respondent, who also appeared for the interview, along with the petitioner and others, but was not selected, filed a petition in WP MP No.2658 of 2004 to implead him as 5th respondent, which was allowed on 22.03.2004 and accordingly, he was impleaded as 5th respondent. Subsequently, he filed a petition in WP MP No.32317 of 2013 stating that he is withdrawing from the writ petition. The said application was allowed and was permitted to withdraw from the writ petition.

4. Respondents 1 and 2 filed a counter-affidavit *inter-alia* contending that as per Clause 8 of G.O.Ms.No.526 dated 21.12.1988, it is open for the petitioner to constitute a Staff Selection Committee on the lines prescribed by the Government for other private educational institutions or to adopt Staff Selection Committee of their own choice, with or without a Government nominee (however there shall be a subject expert), in the latter case, the Management will not be eligible for financial aid from the Government. It is further contended that since the 4th respondent-Management has been receiving financial aid from the Government, the Selection Committee, without a Government representative, is not in accordance with G.O.Ms.No.526 and therefore, the appointment of the petitioner cannot be approved.

5. In the instant case, as the appointment of the petitioner and two other candidates was not approved, the other two candidates also filed a separate writ petition in WP No.5392 of 2001 and the petitioner filed the present writ petition. WP No.5392 of 2001 was filed by the other two candidates, who were selected for the posts of Lecturer in Civics and Arabic, along with the petitioner. Learned counsel appearing for the petitioners therein submitted that the relief sought in the writ petition has been granted by the respondent-authorities vide proceedings dated 21.12.2002 and therefore, no further orders are necessary in the writ petition. In view of the said submission, this court closed WP No.5392 of 2001 and the petitioners therein were paid salaries.

6. Earlier, the present writ petition was disposed of on merits in the absence of her counsel. Aggrieved thereby, the petitioner preferred an appeal in WA No.1649 of 2005 and the said writ petition was allowed setting aside the order in the present writ petition and the matter was again remitted back and came to be decided by this court. In view of the said fact, the relief granted to the other two candidates,

who are Lecturers in Civics and Arabic, was not granted to the petitioner. The present writ petition is thus still pending.

7. The only question that arises for consideration in the instant case is whether in view of Clause 8(1) of G.O.Ms.No.526 dated 21.12.1988, now the petitioner's appointment can be approved?

8. In support of his contention that the condition imposed in Clause 8(1) of G.O.Ms.No.526 dated 21.12.1988 is violative of Article 30(1) of the Constitution of India, learned counsel appearing for the petitioner relied on a decision in '***Sindhi Education Society vs. Govt. (NCT of Delhi)***[1]', wherein the Supreme Court held as follows:

> "In other words, all laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.
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> It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.

9. In the instant case, the petitioner was selected by a duly constituted Selection Committee and she possesses all the qualifications required for the post for which she was selected. Merely because, there is no Government nominee in the Selection Committee, the selection does not become illegal. However, I am not inclined to decide the issue whether Clause 8(1) of G.O.Ms.No.526 dated

21.12.1988 has to be struck down as violative of Article 30(1) of the Constitution of India, since the appointment of other two candidates selected for the posts of Lecturer in Civics and Arabic, along with the petitioner by the same Selection Committee, have been approved by the respondent-authorities. There should not be any disparity among the candidates who were selected by the same Selection Committee, who filed writ petition basing on the same cause of action. The writ petition is, therefore, succeeds. The 3rd respondent is directed to approve the appointment of the petitioner vide proceedings dated 26.10.1998. The respondents are further directed to pay the salary to the petitioner from the date of appointment as per her entitlement on par with the petitioners in WP No.5392 of 2001.

10. The writ petition is accordingly disposed of. There shall be no order as to costs. Miscellaneous petitions, pending if any in this petition, shall stand closed.

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R. KANTHA RAO, J

Date: 22.01.2016
BSS

HON'BLE SRI JUSTICE R. KANTHA RAO

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[1] (2010)8 SCC 49